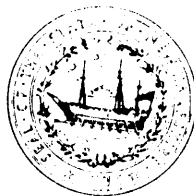


DEPUTY ATTORNEY GENERAL
JEFFREY R. HOWARD



SEP 1 1988

THE ATTORNEY GENERAL
STATE HOUSE ANNEX
25 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

July 2, 1988

Michael W. Holmes, Esquire
Consumer Advocate
8 Old Suncook Road
Concord, New Hampshire 03301

Dear Michael:

By letter of September 2, 1987 you have requested an interpretation by this office of RSA 363:28,III (Cum. Supp. 1987) which provides that "[t]he Consumer Advocate shall have authority to contract for outside consultants within the limits of funds available to the office".

Specifically, you have asked whether the subsection enables the Consumer Advocate to enter into consultant contracts without the prior approval of the Governor and Council, the Department of Administrative Services or this office. For the reasons which follow, we do not interpret RSA 363:28,III (Cum. Supp. 1987) to so enable you.

The statute about which you inquire contains no express language regarding prior contract approval. RSA 4:15 (1970) on the other hand, which provides for governor and executive council approval refers to "expenditure[s] of any moneys appropriated...to...any department of the state government...". In view of the general applicability of RSA 4:15 (1970), your question prompts us to seek within RSA 363:28,III (Cum. Supp. 1987) a legislative intent to exempt the Office of Consumer Advocate from the ordinary fiscal constraints to which executive departments and agencies are normally subject. See also, RSA 5:18-a (Cum. Supp. 1987); RSA 21-I:8,I(b)(Cum. Supp. 1987). We have found no such intent.




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A specific statutory authority, on the part of a state agency to contract with outside consultants or other personal service providers is not uncommon. Some such provisions expressly require Governor and Council approval, for example, while others do not. Cf., RSA 21-I:9, VII (Cum. Supp. 1987) (The Division of Information Services may employ consultants to carry out specific projects with the approval of the commissioner and the governor and the consent of the council); and RSA 170-G:4, VI (Cu. Supp. 1987) (The Director of the Division for Children and Youth Services may enter into agreements with local providers to purchase their services). RSA 4:15 (1970) however, provides no limitation suggesting that a specific statutory authorization to expend state funds for a particular purpose acts to exempt a department from its general requirements. Nor do the regulations adopted pursuant thereto, and codified at N.H. Code of Administrative Rules provide any applicable exemption. Further, the legislative history of RSA 363:28 reveals no suggestion of additional or exceptional powers. Moreover, the Office's status as an "administratively attached agency" does not confer any particular autonomy in this regard. See, RSA 21-G:10 (Cum. Supp. 1987); cr. New Hampshire Retirement System v. Sununu, 126 N.H. 104 (1985).

Rather, this office is of the opinion that the executive power of the State, vested in the Governor, which creates an inherent power in the Governor and Council to direct and regulate the internal workings of the executive department, has not been legislatively superseded in this particular context. See, Opinion of the Justices, 116 N.H. 406, 411 (1976). Instead, we view RSA 363:28, III (Cum. Supp. 1987) as an authorization to negotiate and execute contracts for a certain type of service which might not ordinarily be assumed necessary to the Office's effective operation. It does not relieve the Office from those administrative responsibilities which are of a fiscal nature. Accordingly, we would advise that contracts for "outside consultants" be submitted to normal administrative and executive review.

I trust that this has been responsive to your inquiry. Please do not hesitate to contact me should you have any questions.

Sincerely,


Monica A. Ciolfi
Attorney
Civil Bureau

MAC/pad
0-88-033